

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

- by -

Mountain World Entertainment Ltd.  
(" Mountain World ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 1999/682

**DATE OF DECISION:** March 24, 2000

## DECISION

### OVERVIEW

This is an appeal filed by Glenn Fawcett on behalf of Mountain World Entertainment Ltd. (“Mountain World”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 21st, 1999 under file number ER 96514 (the “Determination”).

The Director’s delegate determined that Mountain World owed 14 former employees a total of \$12,580 in unpaid wages; the employees’ unpaid wage claims range from \$83.48 to \$3,200. Of the 14 claims, 8 are for an amount less than \$325.

### FACTS AND ANALYSIS

Mountain World is no longer an operating entity having entered bankruptcy, following the defeat of a proposal to its creditors, on June 3rd, 1999. Deloitte & Touche Inc. has been appointed as Mountain World’s trustee in bankruptcy. Given the foregoing, and the fact that this appeal was filed, not by Mountain World’s trustee, but rather by Mr. Glenn Fawcett on Mountain World’s behalf, I must first turn my mind to the question of whether this appeal is properly before me.

Glenn Fawcett describes himself in his November 12th, 1999 letter to the Tribunal--appended to the notice of appeal--as a *former* officer (president) and director of Mountain World. Mr. Fawcett does not appear to have been properly authorized by the trustee, or anyone else currently responsible for managing the affairs of Mountain World, to file the within appeal. On that basis alone, I have some concerns about the propriety of this appeal.

Further, and more fundamentally, as a result of Mountain World’s bankruptcy on June 3rd, 1999, only its trustee is legally entitled to appeal the Determination (see *e.g.*, *Fyfe and Canadian Neon Ltd.*, B.C.E.S.T. Decision No. 080/00 and *Centrux Management Ltd.*, B.C.E.S.T. Decision No. 091/00). Section 71(2) of the federal *Bankruptcy and Insolvency Act* states that “on an assignment [into bankruptcy], a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, forthwith pass to and vest in the trustee named in the...assignment...”. The trustee, in turn, is given wide authority to deal with the bankrupt’s property. For example, the trustee may, with the permission of the inspectors, “bring, institute or defend any action or other legal proceedings relating to the property of the bankrupt” [see section 30(1)(d)]. Thus, on bankruptcy, the bankrupt’s property (subject to certain exceptions that have no application in this case) vests in the trustee who is given, for the most part, exclusive authority to deal with that property.

With respect to the employees’ unpaid wage claims, according to the material submitted by Mr. Fawcett, these claims all concern payroll cheques issued for the pay period May 16th-31st, 1999 which cheques did not clear the Mountain World bank account against which the cheques were drawn prior to bankruptcy (on June 3rd) and the subsequent freezing of the bank account by the trustee. So far as I gather, these claims will be treated, in the bankruptcy, as “preferred claims”

(i.e., subject to the claims of secured creditors, the claims will take priority over the claims of all other general or ordinary creditors) to the extent of \$2,000 per employee which will substantially protect most, but not all, of the employees [see section 136(1)(d) of the *Bankruptcy and Insolvency Act*]. The three employees whose claims exceed \$2,000 will have to claim the “excess” as ordinary creditors [see *BIA*, section 136(3)].

Accordingly, Mr. Fawcett, purporting to act as agent for Mountain World does not have the legal authority to appeal the Determination as that right lies solely with Mountain World’s licensed trustee--in this case, Deloitte & Touche Inc. The matter of the 14 employees’ wage entitlements will have to be addressed in the course of the bankruptcy proceeding itself.

**ORDER**

Pursuant to section 114(1)(b) and (c) of the *Act*, I order that this appeal be dismissed.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**